

**Statement of
Walter M. Kramer, President
American Institute of Marine Underwriters
Before the
Senate Subcommittee on Surface Transportation and
Merchant Marine**

April 21, 1998

Good Afternoon. My name is Walter M. Kramer and I am President of the American Institute of Marine Underwriters ("AIMU"). AIMU is the trade association representing American insurers who write more than 80% of the ocean marine or transportation insurance generated in the United States. AIMU celebrates its 100th anniversary this year, and we are proud of it. We are also proud of the contribution AIMU members make to U.S. international commerce. A list of the members of AIMU is included in the attached brochure CARGO INSURANCE, Competition with a Difference.

AIMU is grateful for this opportunity to express our views on the proposed revision of the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 1300 *et seq.* The American marine insurance market strongly urges Congress to adopt the proposed revisions to COGSA. The proposal incorporates much needed reform and is widely supported throughout the maritime industries.

Perhaps some background on marine insurance would be helpful in understanding the importance of COGSA reform to our industry and to international commerce. The U.S. ocean marine insurance market writes \$2 billion in direct written premiums annually. AIMU members insure the ships which carry U.S. exports and imports (hull insurance) as well as the liabilities of shipowners (marine liability and pollution). However, the single most important component of

our members' premium income is cargo insurance.

In this country, one half of the ocean marine premiums, or \$1 billion, comes from cargo insurance, sometimes referred to as transportation insurance. Some refer to cargo insurance as the guarantor of world trade. The financial well-being of all nations, including our own, depends upon the success of foreign trade and transportation of cargo. Cargo insurance facilitates international trade by insuring against all transit risks, including the risk of war. Most shippers have continuous or open cargo policies covering all their shipments automatically.

Cargo insurance provides invaluable protection to exporters and importers. Losses are paid directly to the owner of the cargo, essentially regardless of fault, so that international documents of sale and letters of credit can be relied upon. When cargo is damaged in transit, the parties to the sales contract can rely upon cargo insurance to pay claims swiftly throughout the world. It is then up to the cargo insurer to attempt to recover such losses from the shipowner or other party who caused the loss. The success of such recovery efforts affects directly the loss experience and premium rates paid by shippers.

Cargo insurance is inexpensive; it constitutes a very small portion of the cost of transporting goods internationally; say one-tenth of one percent. This low cost protection is in part possible because of the ability of cargo insurers to recover from carriers or others who are responsible for cargo damage. Due to an unfortunate decision by the U.S. Supreme Court, the ability of American marine insurers to make such recoveries is in jeopardy.

The *Sky Reefer* decision involved a clause in a bill of lading inserted by a foreign shipowner requiring a U.S. importer to submit to foreign arbitration. Even though cargo

interests have no opportunity to negotiate the contents of a bill of lading, foreign shipowners can now unilaterally deprive American cargo owners of the right to pursue claims against them in U.S. courts. As a practical matter, forcing cargo interests abroad to pursue recoveries has lessened the protections guaranteed by the existing COGSA to American shippers.

As a result of the *Sky Reefer* decision, recovery actions against shipowners by Americans are being forced abroad to jurisdictions where the costs of pursuing the claims, and the usually disappointing outcomes, are such that seeking recovery there is largely futile. The inevitable result will be an increase in costs: either in increased premiums to the shipper or unprofitable results for the insurer, or both.

Cargo insurance is extremely competitive. Today, insurers compete globally. An account in Boston may be placed with insurers in Europe or Asia. American marine insurers must be in a position to meet this global competition. If American marine insurers cannot pursue claims in American courts, they are forced to decide between certain high costs in unpredictable foreign legal systems or simply writing off the claims. Either choice will eventually add significantly to loss ratios. If the American insurer raises premiums, it could lose the account to a foreign insurer who faces no such restriction. We know of no other country which similarly permits the restriction of access to its own courts.

Now, AIMU members are being forced to forgo claims against carriers responsible for the losses. It is not just the small claims which are being written off. Many cases involving \$50,000 to \$100,000 in cargo damage are now being closed by American marine insurers as a result of the *Sky Reefer* case. The resulting negative impact on net loss experience will be detrimental to U.S. policyholders who may be forced to pay higher premiums, possibly making them less competitive.

AIMU strongly believes that American cargo interests should have the right to pursue arbitration in this country or to pursue claims in the U.S. judicial system. That right should not be compromised by foreign shipowners who impose such clauses in contracts of adhesion, burdening American shippers unfairly.

The proposed revision of COGSA developed through the Maritime Law Association of the United States contains a provision which would remedy the *Sky Reefer* problem. But AIMU's support for this reform legislation goes far beyond this one vital improvement. The MLA proposal constitutes comprehensive reform of the liability scheme for damage to cargo in international maritime commerce. The proposal is a compromise among the various interests. We believe it is the best available solution to long-standing problems with COGSA.

AIMU has supported COGSA reform for the past two decades. COGSA was adopted over sixty years ago, and much has changed since then. Containerization has radically altered the way cargo is transported. But, COGSA made no provision for containers and refers only to packages. "When is a container a package?" has been a question litigated far too often. The outdated per package limitation of liability imposed by COGSA is inadequate. The MLA redraft of COGSA addresses both of these problems.

In the past, AIMU supported the revision of COGSA through the adoption in this country of the Visby Amendments to the Hague Rules. AIMU actively participated in the final drafting of the MLA proposal. The MLA proposal adopts reforms similar to the Visby solutions to problems such as how to define a package and the need for an increased package limitation. While international uniformity remains our basic goal, AIMU believes that the compromise worked out through the MLA offers the best chance for much needed COGSA reform. We simply cannot afford another decade without reform.

Today, insurance of international shipments is becoming increasingly important to world economies. Ten years ago, international trade accounted for only 10% of the world domestic product. Today, it constitutes 20% or about \$30 trillion. U.S. companies are going global in record numbers. Five years ago, only 400,000 U.S. companies engaged in exports. This year, the U.S. Department of Commerce expects 1.2 million U.S. companies to export. By the year 2015, that number is expected to double.

In the face of this current and projected growth in international trade, a modern system for allocation of responsibility for cargo damage is necessary to world commerce and is vitally important to U.S. marine insurers. The MLA proposal to revise COGSA would provide much needed reform and we urge its adoption.

AIMU would be pleased to provide any assistance to the Subcommittee in its deliberations. We look forward to the opportunity to review the legislation as it is introduced in the Senate. Please let us know if there are any questions.